

§ 232.17

- (i) The accessibility of the location to persons responsible for making repairs;
- (ii) The presence of hazardous conditions that affect the ability to safely make repairs of the type needed at the location;
- (iii) The nature of the repair necessary to bring the car into compliance;
- (iv) The need for railroads to have in place an effective means to ensure the safe and timely repair of equipment;
- (v) The relevant weather conditions at the location that affect accessibility or create hazardous conditions;
- (vi) A location need not have the ability to effectuate every type of brake system repair in order to be considered a location where some brake repairs can be performed;
- (vii) A location need not be staffed continuously in order to be considered a location where brake repairs can be performed;
- (viii) The ability of a railroad to perform repair track brake tests or single car tests at a location shall not be considered; and
- (ix) The congestion of work at a location shall not be considered

(2) The general factors and guidelines outlined in paragraph (f)(1) of this section should be applied to the following locations:

- (i) A location where a mobile repair truck is used on a regular basis;
- (ii) A location where a mobile repair truck originates or is permanently stationed;
- (iii) A location at which a railroad performs mechanical repairs other than brake system repairs; and
- (iv) A location that has an operative repair track or repair shop;

(3) In determining whether a location is the nearest location where the necessary brake repairs can be made, the distance to the location is a key factor but should not be considered the determining factor. The distance to a location must be considered in conjunction with the factors and guidance outlined in paragraphs (f)(1) and (f)(2) of this section. In addition, the following safety factors must be considered in order to optimize safety:

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- (i) The safety of the employees responsible for getting the equipment to or from a particular location; and

- (ii) The potential safety hazards involved with moving the equipment in the direction of travel necessary to get the equipment to a particular location.

(g) *Designation of repair locations.* Based on the guidance detailed in paragraph (f) of this section and consistent with other requirements contained in this part, a railroad may submit a detailed petition, pursuant to the special approval procedures contained in § 232.17, containing a plan designating locations where brake system repairs will be performed. Approval of such plans shall be made accordance with the procedures contained in § 232.17, and shall be subject to any modifications determined by FRA to be necessary to ensure consistency with the requirements and guidance contained in this part.

[66 FR 4193, Jan. 17, 2001, as amended at 67 FR 17580, Apr. 10, 2002]

§ 232.17 Special approval procedure.

(a) *General.* The following procedures govern consideration and action upon requests for special approval of a plan under § 232.15(g), an alternative standard under § 232.305, and for special approval of pre-revenue service acceptance testing plans under subpart F of this part.

(b) *Petitions for special approval of a plan or an alternative standard.* Each petition for special approval of a plan under § 232.15(g) or an alternative standard shall contain:

(1) The name, title, address, and telephone number of the primary person to be contacted with regard to review of the petition;

(2) The proposed plan pursuant to § 232.15(g) or the proposed alternative standard, in detail, to be substituted for the particular requirement of this part;

(3) Appropriate data or analysis, or both, for FRA to consider in determining whether the plan is consistent with the guidance contained in § 232.15(f) and the requirements of this part or whether the alternative standard will provide at least an equivalent level of safety; and

(4) A statement affirming that the railroad has served a copy of the petition on designated representatives of its employees, together with a list of the names and addresses of the persons served.

(c) *Petitions for special approval of pre-revenue service acceptance testing plan.* Each petition for special approval of a pre-revenue service acceptance testing plan shall contain:

(1) The name, title, address, and telephone number of the primary person to be contacted with regard to review of the petition; and

(2) The elements prescribed in § 232.505.

(d) *Service.* (1) Each petition for special approval under paragraph (b) or (c) of this section shall be submitted in triplicate to the Associate Administrator for Safety, Federal Railroad Administration, 400 7th Street, SW., Washington, DC 20590.

(2) Service of each petition for special approval of a plan or an alternative standard submitted under paragraph (b) of this section shall be made on the following:

(i) Designated representatives of the employees of the railroad submitting a plan pursuant to § 232.15(g) or designated representatives of the employees responsible for the equipment's operation, inspection, testing, and maintenance under this part;

(ii) Any organizations or bodies that either issued the standard incorporated in the section(s) of the rule to which the special approval pertains or issued the alternative standard that is proposed in the petition; and

(iii) Any other person who has filed with FRA a current statement of interest in reviewing special approvals under the particular requirement of this part at least 30 days but not more than 5 years prior to the filing of the petition. If filed, a statement of interest shall be filed with FRA's Associate Administrator for Safety and shall reference the specific section(s) of this part in which the person has an interest.

(e) *Federal Register notice.* FRA will publish a notice in the FEDERAL REGISTER concerning each petition under paragraph (b) of this section.

(f) *Comment.* Not later than 30 days from the date of publication of the notice in the FEDERAL REGISTER concerning a petition under paragraph (b) of this section, any person may comment on the petition.

(1) A comment shall set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding.

(2) The comment shall be submitted in triplicate to the Associate Administrator for Safety, Federal Railroad Administration, 400 7th Street, SW., Washington, DC 20590.

(3) The commenter shall certify that a copy of the comment was served on each petitioner.

(g) *Disposition of petitions.* (1) If FRA finds that the petition complies with the requirements of this section and that the proposed plan under § 232.15(g), the alternative standard, or the pre-revenue service plan is acceptable and justified, the petition will be granted, normally within 90 days of its receipt. If the petition is neither granted nor denied within 90 days, the petition remains pending for decision. FRA may attach special conditions to the approval of any petition. Following the approval of a petition, FRA may reopen consideration of the petition for cause.

(2) If FRA finds that the petition does not comply with the requirements of this section and that the proposed plan under § 232.15(g), the alternative standard, or the pre-revenue service plan is not acceptable or justified, the petition will be denied, normally within 90 days of its receipt.

(3) When FRA grants or denies a petition, or reopens consideration of the petition, written notice is sent to the petitioner and other interested parties.

[66 FR 4193, Jan. 17, 2001, as amended at 67 FR 17580, Apr. 10, 2002]

§ 232.19 Availability of records.

Except as otherwise provided, the records and plans required by this part shall be made available to representatives of FRA and States participating under part 212 of this chapter for inspection and copying upon request.